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22 UNITED STATES OF AMERICA

23 UNITED STATES DISTRICT COURT

24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25 UNITED STATES OF AMERICA,

No. CR 23-CR-169-MEMF

26 Plaintiff,

GOVERNMENT'S RESPONSE TO VICTIM  
STATEMENTS FROM BASQUIAT VENICE  
INVESTMENT GROUP AND RICHARD  
LIPUMA

27 v.

28 MICHAEL BARZMAN,

Sentencing Date: August 18, 2023  
Sentencing Time: 11:00 a.m.  
Location: Courtroom of the  
Hon. Maame Ewusi-  
Mensah Frimpong

Defendant.

29 Plaintiff United States of America, by and through its counsel  
30 of record, the United States Attorney for the Central District of  
31 California and Assistant United States Attorneys Mark Williams,  
32 Matthew O'Brien, and Alix McKenna, hereby submits its response to the  
33 Court's orders on August 14 and 15, 2023 (Dkt. Nos. 34 & 36)

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1 requiring a response to the victim statements filed by Basquiat  
2 Venice Investment Group and Richard LiPuma.

3 Dated: August 16, 2023 Respectfully submitted,

4 E. MARTIN ESTRADA  
United States Attorney

5 MACK E. JENKINS  
6 Assistant United States Attorney  
Chief, Criminal Division

7  
8 /s/  
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10 Assistant United States Attorneys

11 Attorneys for Plaintiff  
12 UNITED STATES OF AMERICA

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Pursuant to the Court's orders (Dkt. Nos. 34 & 36), the government responds herein to the "Victim Impact Statement" filed on August 14, 2023 by third party Basquiat Venice Investment Group ("BVIG") (Dkt. No. 33), and the victim letter submitted on August 15, 2023 by third party Richard LiPuma (Dkt. No. 35). Neither BVIG nor Mr. LiPuma is a victim of the charged offense committed by defendant MICHAEL BARZMAN ("defendant"). Accordingly, BVIG and Mr. LiPuma have no right to be heard at defendant's sentencing. Nor do BVIG or Mr. LiPuma have any right to an evidentiary hearing prior to defendant's sentencing. The Court should disregard their victim statements and proceed with defendant's sentencing on August 18, 2023.

## II. ARGUMENT

**A. BVIG and Mr. Lipuma Are Not Victims in This Criminal Case**

16 The government has not provided any victim notifications in this  
17 case because the government is not aware of any victims of the  
18 charged offense (other than the FBI). Neither BVIG nor Mr. LiPuma is  
19 a victim of the charged offense. Accordingly, the government was not  
20 required to provide BVIG or Mr. LiPuma with any of the notifications  
21 or accommodations set forth in the Crime Victims' Rights Act ("CVRA")  
22 or any related statute.

23 The CVRA defines a "crime victim" as "a person directly and  
24 proximately harmed as a result of the commission of a Federal  
25 offense." 18 U.S.C. § 3771(e).<sup>1</sup> Defendant pled guilty to a single

<sup>1</sup> Despite BVIG's absurd claim to the contrary (Victim Impact Statement at 4:20), paintings are not "persons" and cannot be victims.

1 count of violating 18 U.S.C. § 1001 for lying to the FBI during  
2 interviews between August and October 2022, when he claimed, falsely,  
3 that he did not create the Fraudulent Paintings. The charged offense  
4 - lying to the FBI in late 2022 about the fact that he created the  
5 Fraudulent Paintings in 2012 - did not directly and proximately cause  
6 any harm to BVIG or Mr. Lipuma.

The only victim here is the FBI. Defendant's false statements to the FBI directly and proximately harmed the FBI by sidetracking and prolonging the agents' investigation into defendant's role in the Fraudulent Paintings. Other than the FBI, defendant's false statements to the FBI directly and proximately harmed nobody.

12 Both BVIG and Mr. LiPuma ignore that they could only qualify as  
13 victims under the CVRA if defendant's false statements to the FBI  
14 between August and October 2022 directly and proximately harmed them.  
15 The submissions of BVIG and Mr. LiPuma are chock full of alleged  
16 harms purportedly caused by defendant prior to the charged offense.  
17 Under the CVRA, those prior alleged harms allegedly caused by  
18 defendant prior to the charged offense do not transform BVIG or Mr.  
19 LiPuma into victims in this case. While BVIG and Mr. LiPuma may have  
20 other legal remedies available for defendant's prior alleged  
21 misconduct, they do not count as victims in this criminal proceeding.

## 1. BVIG

23           BVGIG acquired the Fraudulent Paintings many years prior to the  
24 conduct charged here. The dramatic drop in the value of the  
25 Fraudulent Paintings in 2022 was not directly and proximately caused  
26 by defendant telling the FBI in the fall of 2022 that he did not  
27 create the Fraudulent Paintings.

1        Aside from being replete with false statements, the fundamental  
2 flaw in BVIG's 56-page "Victim Impact Statement" is that even if  
3 BVIG's claims were true (which the government denies), BVIG still  
4 would not qualify as a victim of the charged offense. Even if the  
5 Fraudulent Paintings were authentic works by Jean-Michel Basquiat  
6 (which the government denies), defendant's statements to the FBI in  
7 2022 that he did not create the Fraudulent Paintings still would not  
8 have directly and proximately harmed BVIG. If BVIG's story were  
9 true, then defendant was telling the truth during the interviews with  
10 the FBI from August through October 2022 when he said he did not  
11 create the works, and BVIG could not possibly have been harmed by  
12 those purportedly true statements.

13        In contending otherwise, BVIG asks to Court to look beyond the  
14 elements of the charged offense. To do so, however, would be  
15 contrary to the plain language of the CVRA, and would require federal  
16 courts to engage in extensive factfinding at various stages of a  
17 criminal proceeding to determine the full scope of a particular  
18 defendant's criminal conduct (so that potential victims' alleged CVRA  
19 rights could be enforced). Congress did not intend such a result.

20        Indeed, the facts of this case make plain the pitfalls of  
21 looking beyond the elements of a particular offense in determining  
22 who qualifies as a "crime victim" under the CVRA. The Fraudulent  
23 Paintings have been the subject of numerous overlapping schemes over  
24 the past decade. The government's investigation into those schemes  
25 is ongoing. As explained below, an evidentiary hearing into the  
26 decade's worth of frauds surrounding the Fraudulent Paintings would  
27 turn the government's narrowly tailored, straightforward criminal  
28 case against defendant into a quasi-civil quagmire.

2. Mr. LiPuma

2 Mr. Lipuma's letter to the Court similarly describes alleged  
3 harms caused by defendant to Mr. Lipuma prior to the charged offense  
4 in this case. Mr. Lipuma complains about numerous false statements  
5 allegedly made to him by defendant over the past decade, and the  
6 resulting financial hardships he incurred relating to the exhibition  
7 of the Fraudulent Paintings in early 2022. Even if everything that  
8 Mr. Lipuma claims is true, it would not make him a victim of the  
9 false statements that defendant provided to the FBI from August  
10 through October 2022.

B. Defendant's Sentencing Should Proceed As Scheduled on August 18, 2023 Because There Is No Basis for an Evidentiary Hearing

## 1 . BVIG

14 BVIG's request for a continuance of defendant's sentencing so  
15 that an evidentiary hearing can take place lacks legal support and  
16 defies common sense. BVIG asks the Court to delay defendant's  
17 straightforward sentencing so that the Court can preside over a fact-  
18 finding inquiry covering events spanning a decade and dozens of  
19 witnesses.<sup>2</sup> An evidentiary hearing would be a mini-trial, despite

21       <sup>2</sup> Several of the key stakeholders of the “victims” are  
22 criminals. For example, Pierce O’Donnell (who authored the “Victim  
23 Impact Statement”) has federal and state convictions for violating  
24 campaign-finance laws (for which he was sentenced to 60 days in  
25 prison). (See, e.g., United States v. O’Donnell, C.D. Cal. Case No.  
26 2:08-CR-872-SJO.) O’Donnell was suspended from the California State  
27 Bar for his misconduct. Lee Mangan (see “Victim Impact Statement,”  
28 Exh. 12) has convictions for cocaine trafficking and securities  
fraud. Their associate William Force (see id. at 31-32) also was  
convicted and imprisoned for felony drug trafficking. Aaron DeGroft,  
the former director of the Orlando Museum of Art (see id., Exh. 11),  
was sued on August 14, 2023 (along with O’Donnell, Mangan, Force,  
LiPuma, BVCG, and others) by the museum for fraud and conspiracy as a  
result of the Basquiat exhibition. (See  
<https://www.nytimes.com/2023/08/15/arts/design/fake-basquiats-orlando-lawsuit.html.>)

1 the fact that there is no pending dispute between the government and  
2 defendant. An evidentiary hearing would turn what should be a  
3 straightforward process on its head and interfere with the  
4 government's ongoing criminal investigation. There is no authority  
5 for a non-victim third party to derail a sentencing in such a manner.

6 While BVIG frames its request as restitutionary (Victim Impact  
7 Statement at 51:26-27), BVIG is not seeking restitution. BVIG does  
8 not claim that defendant ripped off BVIG by selling fraudulent  
9 artworks to BVIG. To the contrary, BVIG claims it purchased genuine  
10 Basquiat paintings from defendant. (Id.) Hence even if BVIG's  
11 claims were accurate (which the government denies), BVIG would not be  
12 entitled to any restitution from defendant.

13 Instead, BVIG requests an evidentiary hearing through which to  
14 litigate the authenticity of the Fraudulent Paintings. (Id. at 52:2-  
15 12.) There is no legal authority providing for such a hearing here,  
16 and the lengthy "Victim Impact Statement" cites none.

17 Defendant has pled guilty to a narrow offense and seeks to be  
18 sentenced for his crime. Other than a minor disagreement about the  
19 length of defendant's probation and the amount of community service  
20 he should perform, defendant and the government (and the United  
21 States Probation Office) are in complete agreement on the resolution  
22 of this case. His sentencing should go forward as scheduled.

23       2. Mr. LiPuma

24 The same holds true for Mr. LiPuma. Unlike BVIG, Mr. LiPuma  
25 does not appear to be requesting an evidentiary hearing and is  
26 seeking actual restitution. Nonetheless, his request for a  
27 continuance so that he may prepare a more formal request for the

1 Court is improper because he is not a victim of defendant's charged  
2 offense.

### 3 | III. CONCLUSION

4 Whatever harms defendant allegedly caused BVIG and/or Mr.  
5 LiPuma, neither BVIG nor Mr. LiPuma has any right to sidetrack this  
6 criminal proceeding because neither is a victim of the charged  
7 offense. Defendant should be sentenced on Friday morning.

9 Dated: August 16, 2023 Respectfully submitted,

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Assistant United States Attorney  
Chief, Criminal Division

/s/  
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